IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

WP(C).No. 33517 of 2004(M)

AGAINST THE ORDER DATED 09/09/2004 EA.998/03 IN OS 1300/1996 of PRL.M.C.,IRINJALAKUDA

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PETITIONER:

BABU, S/O. SIVARAMADAS, AGED 41 YEARS,
PAREPARAMBIL HOUSE, PULLUR VILLAGE,
IRINJALAKUDA.

BY ADV. SRI.RENJITH THAMPAN
SMT.P.A.ANITHA

RESPONDENTS:

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1. THE CORNATION KURIES LTD.,
REPRESENTED BY ITS MANAGER.

2. THE CORNATION KURIES LTD.,
IRINJALAKUDA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.33517/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF NOTICE ISSUED BY DY.TAHSILDAR KSFE LTD. DT.3.9.04

EXT.P2 – TRUE COPY OF THE AFFIDAVIT IN EA.998/03

EXT.P2(A) – TRUE COPY OF PETITION, EA.999/03.

EXT.P3 – TRUE COPY OF ORDER IN EA.1466/03 DT.9.9.04.

EXT.P4 – TRUE COPY OF ORDER IN E.A.998/03 DT.9.9.04.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.33517 OF 2004

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DATED THIS THE 19TH JUNE, 2007

J U D G M E N T

In this Writ Petition under Article 227 of the Constitution, the petitioner-2nd judgment-debtor challenges Ext.P4 order of the execution court dismissing an application filed by the petitioner seeking to reopen the evidence.

2. This Writ Petition is remaining defective for non-completion of service of notice on the respondents. But it is obvious that the respondents are aware of the pendency of this Writ Petition since the order of stay issued by this Court on 18.11.2004 has been communicated to the court below.

3. The learned counsel for the petitioner submits that the condition imposed by this Court that a sum of Rs.10,000/- shall be paid by the petitioner within one month has been promptly complied with.

4. A perusal of Ext.P4 will show that it was on a technical reason that the application filed by the petitioner was dismissed. The prayer in Ext.P2 was only for reopening the evidence and there was no separate prayer for setting aside the ex parte order. Technically, the learned Munsiff's view was correct. However, considering the fact that

the total claim in the E.P. is around Rs.30,000/- only and the petitioner has promptly complied with the condition imposed by this Court, I am inclined to set aside Ext.P4 on further conditions. Accordingly, Ext.P4 is set aside and the learned Munsiff is directed to construe Ext.P2 as an application for setting aside the ex parte order also and pass fresh orders after hearing both sides, on condition that the petitioner will continue to remit every month commencing from 16.7.2007 at the rate of Rs.3000/- without fail, till such time as final orders are passed by the execution court on the main prayer in the E.P. which is for arrest and detention. It is however made clear that in the event of any default by the petitioner in the matter of making payments as directed above, he will forfeit the benefit of this judgment and under such an event Ext.P4 will become operative.

The Writ Petition is disposed of as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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